

Tax Type: Motor Fuel Use Tax
Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket # 00-ST-0000
v.)	Acct # 00-00000
)	NTL # 00-000000 0
JOHN DOE, d/b/a DOE OIL CO.)	
)	
Taxpayer)	

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; *John Doe, pro se.*

The Department of Revenue (“Department”) issued a Notice of Penalty for Dyed Diesel Fuel Violation (“Notice”) to *John Doe* (“taxpayer”). The Notice alleged that the taxpayer sold or attempted to sell dyed diesel fuel for use on highways. The taxpayer timely protested the Notice. A hearing was held during which the taxpayer argued that he and his employees did not know that the fuel was going to be used on highways. After reviewing the record, it is recommended that the penalty be upheld.

FINDINGS OF FACT:

1. On June 24, 2004, the taxpayer's son received a call from a woman named Sue, and the caller ID indicated that the call was from ABC Construction. (Tr. p. 7)
2. Sue requested 1,000 gallons of dyed diesel fuel. (Taxpayer Ex. A; Tr. pp. 7-8)
3. On June 24, 2004, one of the taxpayer's employees delivered the dyed diesel fuel to a station in Rutland. (Tr. p. 8)
4. After the delivery was made, the taxpayer's son called Sue to determine where to send the bill. She told him to bill XXX Gas. (Taxpayer's Ex. A; Tr. p. 8)
5. XXX Gas is an unattended service station. It has fuel pumps, but no employees work there. (Taxpayer Ex. C; Tr. p. 9)
6. The taxpayer charged sales tax to XXX Gas on the sale of the fuel. (Taxpayer Ex. A)
7. The tank into which the taxpayer's employee delivered the fuel was marked "Off Road." (Taxpayer Ex. B)
8. The taxpayer reported the sale on Schedule DD-1, Tax-Free Sales of Dyed Diesel Fuel Products, as a sale for construction purposes. (Taxpayer Ex. D; Tr. pp. 14-15)
9. On February 14, 2005, the Department issued the Notice of Penalty showing a penalty due in the amount of \$5,000 for selling or attempting to sell dyed diesel fuel for use on the highways. The Notice was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

Paragraph 16 of section 15 of the Motor Fuel Tax Act (“Act”) (35 ILCS 505/1 *et seq.*), provides in part as follows:

“16. Any licensed motor fuel distributor or licensed supplier who sells or attempts to sell dyed diesel fuel for highway use or for use by recreational-type watercraft on the waters of this State shall pay the following penalty:

First occurrence.....\$5,000
Second and each occurrence thereafter.....\$10,000

(35 ILCS 505/16). The taxpayer believes the fine is excessive and should not be imposed because he and his employees were led to believe that this was the personal fueling station for a construction company, and the fuel was put in an “off road” tank. The taxpayer argues that he did not know that XXX Gas was a retail outlet because the station looks abandoned. He stated that many farmers have setups that look like that, and he thought it was going to be used by ABC Construction for off-road purposes. The taxpayer’s employees charged sales tax on the sale because they thought it was going to be used for construction purposes. The taxpayer claims that this was a one-time occurrence because this purchaser’s regular supplier could not deliver fuel to it that day. This was the only time that the taxpayer delivered to this buyer.

The facts in this case may be very unfortunate, but the statute does not have a provision for abating the penalty for reasonable cause. The statute simply imposes the penalty if dyed fuel is sold for highway use. The taxpayer sold the fuel to an unattended retail outlet. The penalty must therefore be upheld.

Linda Olivero
Administrative Law Judge

Enter: January 9, 2006